



## Final Regulation Agency Background Document

<b>Agency name</b>	Housing and Community Development
<b>Virginia Administrative Code (VAC) citation</b>	13 VAC 5-112
<b>Regulation title</b>	Virginia Enterprise Zone Grant Program
<b>Action title</b>	Repeal of 13 VAC 5-111-10 through 400 The creation of 13 VAC 5-112 -10 through 560 to implement the Enterprise Zone Grant program created by Chapter 47, 59.1-530 through 59.1-541 of the Code of Virginia and amendments to Sections 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1 and 59.1-282.2 of the Code of Virginia.
<b>Date this document prepared</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

These regulations outline the process and procedures for implementation of the Enterprise Zone Grant Act, which is an incentive program to encourage job creation and private investment in distressed areas of the Commonwealth by providing Job Creation Grants and Real Property Investment Grants. These regulations also outline provisions and procedures for qualification for the General Income Tax Credit, Investment Tax Credit and Job Grants, which remain available by statute under certain conditions.

Three substantive changes have been made since the proposed regulations were published: one allows for the acceptance of late grant applications; one elaborates on the grant application submittal process; and one expands the types of documentation the Department will accept to show project completion for the Real Property Investment grant.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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The Board of Housing and Community Development approved the Virginia Enterprise Zone Regulations at a regular meeting of the Board on October 23, 2006.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Chapter 47, 59.1-533 of the Code of Virginia directs the DHCD Board to promulgate Enterprise Zone Grant Program regulations. This is mandatory.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The 2005 General Assembly passed legislation creating the Enterprise Zone Grant Act (Chapter 47, 59.1-530 through 59.1-541). Amendments were made to Sections 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1 and 59.1-282.2 of the Code of Virginia in order to continue certain aspects of the existing Enterprise Zone Program. These regulations outline the process and procedures for implementation of all aspects of these legislative actions.

These regulations are necessary for the welfare of Virginians because they are an essential step in implementing the Enterprise Zone Program, which is designed to help target job creation and investment to Virginia's most distressed communities. Without a regulatory framework the Department of Housing and Community Development cannot administer this program.

**Substance**

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

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The final regulations outline the process and procedures for implementation of all aspects of the above legislative actions, including 1) Provides processes, procedures and eligibility criteria for business firms to access enterprise zone job creation grants; 2) Provides process, procedures and eligibility for qualified zone investors to access real property investment grants; 3) Outlines how enterprise zone grants will be allocated; 4) Provides processes, procedures and requirements for local governments to use to apply for

and receive enterprise zone designations; 5) Outlines the circumstances under which an enterprise zone designation can be terminated; 6) Outlines procedures for localities with enterprise zones to use when amending their zone boundaries or local incentives; 7) Specifies the annual review process for designated zones; 8) Outlines the procedures that will be used to consider renewing designated enterprise zones at the end of 10 and 15 years of zone designation; 9) Outlines the circumstances under which a business or investor can access grants when a zone designation is ending; 10) Outlines the administrative requirements of the Enterprise Zone Program; 11) Outlines the limited circumstances under which qualified zone businesses and qualified zone residents can access enterprise zone tax credits that otherwise will not be available after July 1, 2005 12.) Expands the definition of the term “Business firm” to include additional business and professional organizations and associations.

The final regulations also outline provisions and procedures for qualification for the General Income Tax Credit, Investment Tax Credit and Job Grants, as allowed for by Sections 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1 and 59.1-282.2 of the Code of Virginia.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*  
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

There are no disadvantages to the public or the Commonwealth.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
13 VAC 5-112-10  Page 1	“Agreed-upon procedures” definition had no such reference	Inserted “pursuant to § 59.1-549 of the Code of Virginia”	Clarifies reference to incentive grants as those new job creation and real property investment grants.
13 VAC 5-112-10  Page 2	"Business firm" means any corporation, partnership, electing small business (subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in the Commonwealth of	Replace “local service” with “personal service” to be consistent with statutory change.	Update Regulations to reflect the statute.

	Virginia as well as business and professional organizations and associations whose classification falls under sectors 813910 and 813920 of the North American Industry Classification Systems (NAICS) provided they are not considered local service.		
13 VAC 5-112-10  Page 2	"Business firm" means . . .any corporation, as well as business and professional organizations and associations whose classification falls under sectors 813910 and 813920 of the North American Industry Classification Systems (NAICS) provided they are not considered local service.	Added language that limits eligibility to firms in NAICS 813910 and 813920 to those where a majority of their revenue is generated from customers outside of the Commonwealth	State targets recruitment of national headquarters, regardless of for-profit or non-profit incorporation. NAICS 813910 and 813920 are NAICS codes relevant to non-profit headquarters that the state would target. With the local service restriction removed, however, any entity under these NAICS codes (local, regional, national, etc.) is eligible to apply for job creation grants. This is in keeping with the State's desire to incentivize the location of headquarters operations that generate new revenue for the state and provide high paying jobs.
13 VAC 5-112-10  Pages 3 and 16	"Conduct of same trade or business" means the operations of a single company or related companies or companies under common control.	Deleted the extraneous word "conduct" from the term	To clarify that this is to define what is meant by a same trade or business. Thus the term is now "same trade or business" on page 16 of Regulations.
13 VAC 5-112-10  Page 5	"Grant eligible position" means a new permanent full-time position created above the threshold number at an eligible business firm. Positions	Replace "local service" with "personal service" to be consistent with statutory change.	Update Regulations to reflect the statute.

	in retail, local service or food and beverage service shall not be considered grant eligible positions.		
13 VAC 5-112-10  Page 7	“Local service” means a business which provides services primarily within the city or county in which the business is located. A service business where the majority of sales, or in the case of certain businesses, memberships, come from outside the city or county in which the business is located would not be considered a local service business and would be eligible to qualify for job creation grants pursuant to §59.1-547 of the Code of Virginia. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.	Remove definition pursuant to statutory change.	Update Regulations to reflect the statute.
13 VAC 5-112-10  Page 8	“Mixed use” means a building incorporating residential uses in which a minimum of 30 percent of the useable floor space will be devoted to commercial, office or industrial use. Buildings where less than 30 percent of the useable floor space is devoted to commercial, office or industrial use shall be considered primarily residential in nature and shall not be eligible for a grant under 13 VAC 5-112-110. . .	Corrected Regulation citation in the definition to read VAC 5-112-330	To reference Real Property Investment Grant instead of Investment Tax Credit.
13 VAC 5-112-	None	Add definition of personal	Update Regulations to

<p>10  Page 11</p>		<p>service. "Personal service" which is "such positions classified under NAICS 812."</p>	<p>reflect statute.</p>
<p>13 VAC 5-112-10  Page 11</p>	<p>"Placed in service" means (i) the final certificate of occupancy has been issued by the local jurisdiction for real property improvements or real property investments; or (ii) the first moment that machinery becomes operational and is used in the manufacturing of a product for consumption; or (iii) in the case of tools and equipment it means the first moment they are used in the performance of duty or service.</p>	<p>Add: or final building inspection or other forms of documentation for the completion of such work as the Department may determine based upon actual practice by localities.*</p>	<p>Based on feedback from local zone administrators, added final building inspection as acceptable proof of project completion and third party inspection for cases in which permits are not required as specified in writing by local building official. Qualified real property investments that do not require permits present a challenge for applicants to provide proper documentation of project completion.</p> <p>Clarified that other items within the "Place in service" definition relate only to Real Property Investment Tax Credit.</p>
<p>13 VAC 5-112-70A  Pages 26</p>	<p>For tax years that end on or before December 31, or for businesses with tax years in accordance with §441(f) of the Internal Revenue Code on or before January 7 of the subsequent year, applications requesting a general tax credit shall be submitted to the Department by no later than May 1 of the subsequent calendar year.</p>	<p>Added the language: "If the (May 1, April 30, April 1) due date falls on a weekend or holiday, applications are due the next business day"</p>	<p>To be consistent with common business practice.</p>
<p>13 VAC 5-112-70A  Page 26</p>	<p>. . . At a minimum, these applications must be signed by independent certified public accountant licensed by the Commonwealth.</p>	<p>Removed "at a minimum"</p>	<p>Phrase was meant to set a minimum standard for application submittal. This is addressed by the attestation requirement for the new grants and the pre-2005 incentives are being phased out.</p>
<p>13 VAC 5-112-</p>	<p>For tax years that end on</p>	<p>Added the language: "If the</p>	<p>To be consistent with</p>

180A  Page 34	or before December 31, or for businesses with tax years in accordance with §441(f) of the Internal Revenue Code on or before January 7 of the subsequent year, applications requesting a general tax credit shall be submitted to the Department by no later than May 1 of the subsequent calendar year	(May 1, April 30, April 1) due date falls on a weekend or holiday, applications are due the next business day”	common business practice.
13 VAC 5-112-180A  Page 34	. . . At a minimum, these applications must be signed by independent certified public accountant	Removed “at a minimum”	Phrase was meant to set a minimum standard for application submittal. This is addressed by the attestation requirement for the new grants and the pre-2005 incentives are being phased out.
13 VAC 5-112-180 B  Page 34	The Department shall notify all applicants by June 30 as to the amount of applicable credit or refund it	Deleted word “refund.”	No refunds are issued for the Real Property Investment Tax Credit.
13 VAC 5-112-190 A  Page 35	A Department shall certify to the Commissioner of the Virginia Department of Taxation . . .	Replaced “A” with “The”	To correct grammatical error.
13 VAC 5-112-230 B  Page 39	For tax years that end on or before December 3 . . . applications requesting a general tax credit shall be submitted to the Department by no later than May 1 of the subsequent calendar year.	Added the language: “If the (May 1, April 30, April 1) due date falls on a weekend or holiday, applications are due the next business day”	To be consistent with common business practice.
13 VAC 5-112-230B  Page 39	. . . At a minimum, these applications must be signed by independent certified public accountant	Removed “at a minimum”	Phrase was meant to set a minimum standard for application submittal. This is addressed by the attestation requirement for the new grants and the pre-2005 incentives are being phased out.
13 VAC 5-112-280 F.1.	Those in retail, local service or food and	Replace with “personal service”	Update Regulations to reflect the statute.

Page 44	beverage service.		
13 VAC 5-112-290 D  Page 45	D. The Department will not accept nor process any applications submitted without the required attestation information.	D. In order to request job creation grants, business firms shall submit the application form, final attestation report, and all required documentation to the Department by no later than April 1 of the calendar year subsequent to the qualification year.*	To clarify which materials are to be submitted by applicants, thereby reducing the number of deficient applications.
13 VAC 5-112-290E  Page 45	For tax years that end on or before December 3 . . . applications requesting a general tax credit shall be submitted to the Department by no later than May 1 of the subsequent calendar year	Added the language: "If the (May 1, April 30, April 1) due date falls on a weekend or holiday, applications are due the next business day"	To be consistent with common business practice.
13 VAC 5-112-290 F  Page 45	Inserted a new F.	F. Applications submitted by April 1 without the required attestation report shall be considered late applications and processed according to subsection H below.*	Provides a mechanism to address applications submitted without final attestation reports or with missing or incomplete documentation.
13 VAC 5-112-290 G  Page 45	F. The Department shall review all applications for completeness and notify business firms of any errors by no later than May 15. Business firms must respond to any unresolved issues by no later than June 1. If the Department does not meet its May 15 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification.	G. The Department shall notify the business in writing of any incomplete or missing required documentation or to request written clarification from the business firms on information provided by no later than May 15	Provides a mechanism to address applications submitted without final attestation reports or with missing or incomplete documentation.
13 VAC 5-112-	Inserted a new H.	Any applications with the required final attestation report	Added section to allow for the processing of

<p>290 H;  Page 45</p>		<p>and required documentation submitted after the April 1 due date but before May 15 of the calendar year subsequent to the qualification year will be held until the Department determines that funds remain and it will not have to prorate grant awards. At such time, the Department will review and process such applications and any applications pursuant to subsection F. on a first-come first-served basis*</p>	<p>late grant applications if the allocation is not fully subscribed.</p>
<p>13 VAC 5-112-290 K  Page 46</p>	<p>Inserted a new K.</p>	<p>Applicants may only apply for grants which they are otherwise eligible to claim for such calendar year...</p>	<p>To be consistent with the Real Property Investment Grant application submittal and processing section.</p>
<p>13 VAC 5-112-320 A  Page 47</p>	<p>A. Business firms located in a zone whose designation period is ending that have qualified by or before the zone expiration date may receive the balance of their five consecutive year incentive period provided they continue to qualify under 13 VAC 5-112-270 and 13 VAC 5-112-280. Business firms may not begin additional five-year grant period after the zone expiration date.</p>	<p>A. . . . to qualify under 13 VAC 5-112-270 and 13 VAC 5-112-280. Firms may initiate a five year grant period based on grant eligible positions created up to the date of the zone expiration date not withstanding 13 VAC 5-112-290. . . .</p>	<p>Clarified that business qualification for expiring zones include the last of year of zone designation.</p>
<p>13 VAC 5-112-340 B  Page 49</p>	<p>. . . investor making less than \$2,000,000</p>	<p>Changed \$2,000,000 to \$2 million</p>	<p>For consistency</p>
<p>13 VAC 5-112-340 B.1.  Page 49</p>	<p>. . . a maximum of \$250,00</p>	<p>Change to \$250,000</p>	<p>To correct typo</p>
<p>13 VAC 5-112-</p>	<p>D. Notwithstanding 13</p>	<p>Section should reference the grant cap per building or facility</p>	<p>Corrected typo in citation reference. To</p>

<p>340D</p> <p>Page 50</p>	<p>VAC 5-112-350, E</p>	<p>(340 E).</p>	<p>clarify intent that in the case of multiple tenants, unless there is coordination, DHCD will impart its pro-ration procedures (340D)</p>
<p>13 VAC 5-112-350 C</p> <p>Page 51</p>	<p>C. Real property investments that were placed in service in calendar year 2004 that were not eligible to submit a tax credit request as a small qualified zone resident pursuant to former § <a href="#">59.1-280.1</a> of the Code of Virginia because of the timing of their tax year may apply for a real property investment grant in 2006.</p>	<p>Deletion of section pertaining to applicants that could not qualify for Real Property Improvement Tax Credit in 2005 due to timing of tax year. Such firms were allowed to apply for the Real Property Investment Grant in 2006</p>	<p>No longer relevant.</p>
<p>13 VAC 5-112-350E</p> <p>Page 52</p>	<p>D. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the property for which the tenant holds a valid lease.</p> <p>E. In the case of buildings with multiple tenants and/or owners, such tenants or owners shall coordinate under this section. In cases where such coordination has not occurred, the Department will determine the amount of each tenants' and/or owners' real property investment pursuant to 13 VAC 5-112-340 D.</p> <p>Inserted a new F.</p>	<p>D. In the case of buildings with a tenant or multiple tenants, such tenant(s) shall request written consent from the owner to apply for the grant.</p> <p>E. In the case of buildings with a tenant or multiple tenants, such tenant(s) shall coordinate with the owner and all other tenants under this section. Unless other coordination and agreements have been reached by the owner and all tenants, the Department will automatically determine the amount of each tenant's real property investment pursuant to 13 VAC 5-112-340 D.</p> <p>F. In the case of buildings with multiple owners, such owners shall have written coordination from all other owners. Unless other coordination and agreements have been reached by all owners, the Department will automatically determine the amount of each owners' real property investment pursuant to 13 VAC 5-112-340 D.</p>	<p>Clarified the coordination/pro-ration process for multi-tenant/multi-owner as a result of the 2005 grant cycle. This will also be addressed through the instruction manual.</p>

<p>13 VAC 5-112-360</p> <p>Page 52</p>	<p>Zone investors located in a zone whose designation period is ending must qualify for investments made prior to the zone expiration date to receive a real property investment grant</p>	<p>In the case of zones whose designation period is ending, zone investors must apply for qualified real property investments that were placed in service prior to the zone expiration date to receive a real property investment grant notwithstanding 13 VAC 5-112-350B.</p>	<p>Clarified that business qualification for expiring zones include the last of year of zone designation.</p>
<p>13 VAC 5-112-380 D</p> <p>Page 53</p>	<p>D. The Department will not accept nor process any applications submitted without the required attestation information.</p>	<p>D. In order to request real property investment grants, zone investors shall submit the application form, final attestation report, and all required documentation to the Department by no later than April 1 of the calendar year subsequent to the qualification year.*</p>	<p>To clarify which materials are to be submitted by applicants, thereby reducing the number of deficient applications.</p>
<p>13 VAC 5-112-380E</p> <p>Pages 53</p>	<p>Added a new E.</p>	<p>E. If the April 1 due date falls on a weekend or holiday, applications are due the next business day.</p>	<p>To be consistent with common business practice.</p>
<p>13 VAC 5-112-380 F</p> <p>Page 53</p>	<p>Added a new F.</p>	<p>F. Applications submitted by April 1 without the required attestation report shall be considered late applications and processed according to subsection H below. *</p>	<p>Provides a mechanism to address applications submitted without final attestation reports or with missing or incomplete documentation.</p>
<p>13 VAC 5-112-380 G</p> <p>Page 54</p>	<p>F. The Department shall review all applications for completeness and notify applicants of any errors by no later than May 15. Applicants must respond to any unresolved issues by no later than June 1. If the Department does not meet its May 15 date for notification, then applicants must respond to any unresolved issues within 10 calendar days of the actual notification.</p>	<p>G. The Department shall notify zone investor in writing of any incomplete or missing required documentation or to request written clarification from the business firms on information provided by no later than May 15. Zone investors must respond to any unresolved issues by no later than June 1. If the Department does not meet its May 15 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification.</p>	<p>Provides a mechanism to address applications submitted without final attestation reports or with missing or incomplete documentation.</p>

13 VAC 5-112-380 H  Page 54	Added a new H.	Any applications with the required final attestation report and required documentation submitted after the April 1 due date but before May 15 of the calendar year subsequent to the qualification year will be held until the Department determines that funds remain and it will not have to prorate grant awards. At such time, the Department will review and process such applications and any applications pursuant to subsection F. on a first-come first-served basis.*	Added section to allow for the processing of late grant applications if the allocation is not fully subscribed.
13 VAC 5-112-540 B Page 67	B. Qualified business firms, qualified large zone residents and qualified zone investors . . . .	to read “large qualified zone residents”	Correct transposed words
13 VAC 5-112-540 C Page 67	C. In the case of business firms and large zone residents qualified . . . .	Add “qualified” to large zone residents and business firms	To add missing words.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Staff from Newport News Dept. of Development  Staff from Goodman and Co.	In the definition of “business firm” replace “local service” with “personal service” to be consistent with statutory change.	“Local service” removed; addition of “personal service” is not relevant because NAICS 81390 and 813920 are not personal service.
Staff from Goodman and Co.	With regard to the definition of “business firm” non-profit NAICS 813910 and 813920 should be	State targets recruitment of national headquarters, regardless of for-profit or non-profit incorporation. NAICS 813910 and

	restricted. Incentive should be for for-profit businesses.	813920 are NAICS codes relevant to non-profit headquarters that the state would target. With the local service restriction removed, however, any entity under these NAICS codes (local, regional, national, etc.) is eligible to apply for job creation grants. Added language that limits eligibility to those firms where a majority of their revenue is generated from customers outside of the Commonwealth. This is in keeping with the State’s desire to incentivize the location of headquarters operations that generate new revenue for the state and provide high paying jobs.
Staff from Goodman and Co.	With regard to the definition of “conduct of same trade or business” clarify for “facilities” if limitation is referring to the businesses occupying the buildings or the real estate development business that might be managing or constructing them.	Deleted the extraneous word “conduct” from the term to clarify that this is to define what is meant by a same trade or business. Thus the term is now “same trade or business” on page 16 of Regulations. The concept will be further illustrated in the instruction manual.
Staff from Goodman and Co.  Staff from Newport News Dept. of Development	Replace “local service” with “personal service” in the definition of “grant eligible position” to be consistent with statutory change.	Replaced per statute.
Staff from Newport News Dept. of Development	Remove definition of “local service” pursuant to statutory change.	Deleted “local service” per statute
Staff from Newport News Dept. of Development	Add definition of “personal service”	Added definition based on statutory change. “Personal service” which is “such positions classified under NAICS 812.”
Staff from Goodman and Co.  Staff from Newport News Dept. of Development	Add: or final building inspection or other forms of documentation for the completion of such work as the Department may determine based upon actual practice by localities to the definition of “placed in service”	Based on feedback from local zone administrators, added final building inspection as acceptable proof of project completion and third party inspection for cases in which permits are not required as specified in writing by local building official. Qualified real property investments that do not require permits present a challenge for applicants to provide proper documentation of project completion.  Clarified that other items within the “Place in service” definition relate only to Real Property Investment Tax Credit.
Staff from Goodman and Co.	Insert “weekend, holiday exception” to incentive application submittal deadlines similar to tax returns and their due dates – weekday	Added the language: “If the (May 1, April 30, April 1) due date falls on a weekend or holiday, applications are due the next business day” to be consistent with common business practice.

	immediately following the due date	
Staff from Goodman and Co.	Remove “at a minimum” from application submittal and processing sections	Removed language from sections. Phrase was meant to set a minimum standard for application submittal. This is addressed by the attestation requirement for the new grants and the pre-2005 incentives are being phased out.
Staff from Goodman and Co.  Staff from Newport News Dept. of Development	Replace “local service” with “personal service” in Section 280 F.1	Updated per statute.
Staff from Goodman and Co.	Regulations on multi-tenant pro-ratation seem clear but process for coordination in manual needs work. DHCD should not be referee in coordination process	Clarified the coordination/pro-ratation process for multi-tenant/multi-owner as a result of the 2005 grant cycle. This will also be addressed through the instruction manual.  Modified Section 350 D-F to read: In the case of buildings with a tenant or multiple tenants, such tenant(s) shall request written consent from the owner to apply for the grant. In the case of buildings with a tenant or multiple tenants such tenant(s) shall coordinate with the owner and all other tenants under this section. Unless other coordination and agreements have been reached by the owner and all tenants, the Department will automatically determine the amount of each tenant’s real property investment pursuant to 13 VAC 5-112-340 D. In the case of buildings with multiple owners, such owners shall have written coordination from all other owners. Unless other coordination and agreements have been reached by all owners, the Department will automatically determine the amount of each owners’ real property investment pursuant to 13 VAC 5-112-340 D.
Staff from Norfolk Dept. of Development  Staff from Industrial Development Authority of Halifax County  Staff from Waynesboro Office of Economic Development	Change language to allow incentive usage for entire life of zone – last year of zone designation is last year of incentive qualification (Sections 320 A. and 360)	Clarified that business qualification for expiring zones include the last of year of zone designation.  Added Section 320: Firms may initiate a five year grant period based on grant eligible positions created up to the date of the zone expiration date notwithstanding 13 VAC 5-112-290.  Modified Section 360 to read: In the case of zones whose designation period is ending, zone investors must apply for qualified real property investments that were placed in service prior to the zone expiration

<p>Staff from Staunton Dept. of Economic Development</p> <p>Staff from Goodman and Co.</p>		<p>date to receive a real property investment grant notwithstanding 13 VAC 5-112-350B.</p>
<p>Staff from Newport News Dept. of Development</p>	<p>Typographical error- change to \$250,000 in 340 B.1</p>	<p>Corrected typo so the cap per building reads as "\$250,000."</p>
<p>Staff from Newport News Dept. of Development</p>	<p>Word "notwithstanding" in 340D is confusing and text should be re-written to clarify intent that in the case of multiple tenants, unless there is coordination, DHCD will impart its pro-ration procedures (340D)</p>	<p>Corrected typo in citation reference. Section should reference the grant cap per building or facility (340 E).</p>
<p>Staff from Brown Edwards</p> <p>Staff from Henry County</p> <p>Staff from Goodman and Co.</p>	<p>Allow, as part of the definition of "health benefits", for employers to count entire employment period for employee when health benefits are delayed (i.e. after working 30, 60, 90 days); add in situations where eligibility for health benefits is contingent upon completing initial probationary period, eligibility for the grants will begin at the point the employee is offered health benefits .</p>	<p>No change. Will clarify through the instruction manual that companies may count employees from the day health benefits were offered irrespective of any insurance waiting period for purpose of grant calculations. This is common business practice in the manufacturing sector where jobs have high turnover. Internal Revenue Code requires that all employees in a class of positions be offered health benefits at the onset of employment. However, the law also allows for eligibility for such benefits to be in effect after a waiting period.</p>
<p>Staff from Goodman and Co.</p>	<p>With regard to the definition of "net loss" and the issue of jobs lost at prior site – if business moves a short distance and does not lose any employees then it is not net loss. Example- relocates from out of zone to zone. Need to clarify intent and what is considered as net loss – no direct suggestions provided</p>	<p>No change. This comment references the issue of firms relocating into an Enterprise Zone and initiating usage of the General Income Tax Credit. This scenario is no longer applicable for the GITC as no new firms can initiate use of GITC unless they have been grandfathered in. Budget language covers net loss for these firms (large qualified business firms)</p>
<p>Staff from Chesterfield County Economic Development</p>	<p>Personal service definition should not restrict laundry businesses</p>	<p>No change. Laundry businesses are defined by NAICS as personal service.</p>
<p>Staff from Newport News Dept. of Development</p> <p>Spiegel Brands, Inc.</p>	<p>Retail prohibition excludes mail-order houses and distribution (catalog sales and distribution) under Sector 45 of NAICS b/c not traditional retail and are not storefronts serving local populations</p>	<p>No change. The statute prohibits retail positions. However, such firms as referenced in the comment, based on VEC ES202 data, typically have non-retail positions and these would be grant eligible.</p> <p>78 retail mail-order house business firms have been identified by the VEC across the state.</p>

		Many such firms employ five or fewer employees. The input referenced the following firms: Hanover Direct, Inc. NAICS 424990, misc. distribution (Roanoke County); Lillian Vernon (VA Beach) – multiple NAICS not just retail; and QVC all non-retail NAICS (Roanoke County). Spiegel Brands, Inc. is the only firm within an Enterprise Zone (Newport News) – contacted VEDP – no record of NAICS and company has yet to respond to request to provide NAICS.
Staff from Newport News Dept. of Development	“Threshold number “ is defined twice with no section reference to first definition	Comment is incorrect. “Threshold number” definition on page 17 does refer to Section 200 of the Pre-2005 job grants. The second reference to “threshold number” relates to the new grants and does not have a section reference in keeping with formatting through out the Regulations. The assumption is that unless otherwise noted the definition pertains to the new EZ statute, for which these Regulations were promulgated.
Staff from Goodman and Co.	With regard to Sections 100 and 170, there should be ability for members of a pass through entity to allocate credits in whatever portion that they agree to in writing. This exists for all other tax credit programs in VA and is what form PTE is for	No change. Allocation is specified by statute 59.1-280G.
Staff from Newport News Dept. of Development	Change response time for applicants to 15 days should the Dept not meet its May 15 deadline under application submittal and processing sections	No change. The Department has not missed this deadline or the deadline under the previous program. Per guidance of the Attorney General’s office language was added to the Regulations to allow the Department flexibility should it miss the May 15 deadline due to considerable application volume

Ten organizations commented on the regulations from typos to more substantive recommendations.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

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Current section number (13 VAC 5-)	Proposed new section number, if applicable (13VAC 5-)	Current requirement	Proposed change and rationale
111-10	112-10		Updates program definitions as defined under 59.1-279 through 59.1-284.01 and 59.1-538 through 59.1-549 of the Code of Virginia in effect as of July 1, 2005 (hereafter referred to as the statute)
111-20			Purpose had been defined in the statute at one time; No longer specified
111-30 through 111-60			Deleted sections pertaining to firms qualifying before July 1, 1995 to be consistent with statute
111-70, 80, 85, 90	112-20, 30,40, 50		Adds language to specify the conditions under which firms may <b>begin</b> taking these credits after 7/1/05 and to specify the new annual fiscal limitations to be consistent with statute
	112-60		Adds section to specify the procedures for continued business qualification in zones whose designation period is ending; Zones are beginning to reach the end of their 20-year designation period and a procedure is needed to guide what happens to businesses that are in the midst of an incentive period
111-100,110, 120, 130	112-70, 80, 90, 100	Application materials due May 1 of the subsequent calendar year	Adds holiday provisions to be consistent with common business practice  <i>Removes “at a minimum” because pre-2005 incentives are being phased out and the new grant attestation requirements now address this</i>
111-140	112-110		Replaces the Procedures for Qualifying for the Real Property Improvement and Zone Investment Tax Credit with Procedures for Qualifying for the Real Property Investment Tax Credit, including changes to effective dates and specifying the conditions under which firms may <b>begin</b> taking the Real Property Investment Tax Credits after 7/1/05 to be consistent with statute
111-150, 160, 165			Removes sections on related to the Real Property Improvement Tax Credit to be consistent with statute
111-170	112-120		
	112-130		Adds section to specify annual fiscal limitations for the Real Property Investment Tax Credit to be consistent with statute
	112-140		Adds section to specify eligibility for the Real Property Investment Tax Credit to be consistent with statute
	112-150		Adds section to specify the procedures for continued business qualification in zones whose designation period is ending; Zones are beginning to reach the end of their 20-year designation period and a procedure is needed to guide what happens to businesses that are in the midst of an incentive period
	112-160		Adds a section on anti-churning to be consistent with the other job creation related incentives
111-180, 190	112-170, 180	Application materials due May 1 of the subsequent calendar year	Removes from the section information pertaining to the Real Property Investment Tax Credit to be consistent with statute  Adds holiday provisions to be consistent with common business practice

			<p><i>Removes “at a minimum” because pre-2005 incentives are being phased out and the new grant attestation requirements now address this</i></p> <p><i>Removes “refund” because no refunds are issued for the Real Property Investment Tax Credit</i></p>
111-200	112-190		<p><i>Replaces “A” with “The” to correct grammatical error</i></p>
111-210	112-200		<p><i>Changes effective dates and specifies under what conditions firms may qualify for this incentive to be consistent with statute</i></p>
111-220			<p><i>Removes section on grant funding to be consistent with budget language</i></p>
111-230	112-210		
111-240	112-220		<p><i>Removes the language pertaining to application submittal and processing</i></p>
	112-230	<p>Application materials due April 30 of the subsequent calendar year</p>	<p><i>Adds a section on application submittal and processing to be consistent with earlier sections of the Regulations.</i></p> <p><i>Adds holiday provisions to be consistent with common business practice</i></p> <p><i>Removes “at a minimum” because pre-2005 incentives are being phased out and the new grant attestation requirements now address this</i></p>
	112-240		<p><i>Adds section to specify the procedures for continued business qualification in zones whose designation period is ending; Zones are beginning to reach the end of their 20-year designation period and a procedure is needed to guide what happens to businesses that are in the midst of an incentive period</i></p>
111-250	112-250		
111-260			<p><i>Removes provisions for grant allocations to be consistent with budget language</i></p>
111-270			<p><i>Removes language pertaining to assignment of grants to be consistent with statute</i></p>
	112-260 through 112-390		<p><i>Add sections related to Procedures for Qualifying for Enterprise Zone Job Creation Grants and Procedures for Qualifying for Real Property Investment Grants to be consistent with statute</i></p> <p><i>Replaces “local service” with “personal service” per changes to statute</i></p> <p><i>Changes language to clarify which materials are to be submitted by applicant by deadline, reducing the number of deficient applications</i></p> <p><i>Adds language to address applications without attestation reports or applications received after the April 1 due date</i></p> <p><i>Adds holiday provisions to be consistent with common business practice</i></p> <p><i>Adds section to allow for the processing of late grant applications if the allocation is not fully subscribed</i></p> <p><i>Adds section specifying that applicants can only apply for grants for which they are eligible to claim that</i></p>

			<p><i>calendar year to be consistent with the respective section under Real Property Investment Grant qualification</i></p> <p><i>Adds section to clarify that business qualification for expiring zones includes the last year of the zone designation</i></p> <p><i>Replaces \$2,000,000 with \$2 million for consistency</i></p> <p><i>Changes \$250,00 to \$250,000 to correct typo</i></p> <p><i>Changes citation reference to correct citation that clarifies that DHCD will impart proration procedures unless there is coordination in the case of tenants or multiple owners</i></p> <p><i>Deletes section pertaining to applicants that could not qualify for the Real Property Improvement Tax Credit due to timing of tax year because no longer relevant after 2005</i></p> <p><i>Revises coordination/proration process to improve clarity after first grant cycle in 2005</i></p> <p><i>Changes language to clarify which materials are to be submitted by applicant by deadline, reducing the number of deficient applications</i></p> <p><i>Adds language to address applications without attestation reports or applications received after the April 1 due date</i></p> <p><i>Adds holiday provisions to be consistent with common business practice</i></p> <p><i>Adds section to allow for the processing of late grant applications if the allocation is not fully subscribed</i></p> <p><i>Adds section to clarify that investor qualification for expiring zones includes the last year of the zone designation</i></p>
	112-400, 410		Adds section related to Policies and Procedures for Enterprise Zone Grants for the allocation of grants and the Departments actions with regard to decisions about such grants to be consistent with statute
	112-420		Adds a section under Enterprise Zone Designation with language reflecting that zones designated prior to July 1, 2005 may complete their 20-year designation period and that they will be governed under the provisions of Chapter 47 to be consistent with statute
111-280	112-430		Revises language pertaining to eligible applicants, specifically that towns are no longer eligible applicants but may be included as part of county zones to be consistent with statute
111-290	112-440		Revises language pertaining to zone eligibility requirements to be consistent with statute, specifically

			that any enterprise zone may consist of three-non-contiguous areas (instead of the previous two); removes zone specific census-based and floor area vacancy rates as eligibility requirements as specified by statute; revises the zone size guidelines so that there is only one type of city and creates new maximum and minimum acreage requirements to offer more flexibility to participants
111-320	112-450		
111-300	112-460	Maximum number of zones is 60; zone designation is for a 20-year period; localities may propose local incentives	Maximum number of zones will be 30; initial designation period will be for 10-years with the possibility of two five-year extensions as specified by statute; language pertaining to local incentives is discussed under a different section
111-310	112-470		Adds language pertaining to the procedures and requirements for joint applications, specifically that localities applying for a joint zone must demonstrate a regional need for such and regional impact that couldn't be achieved through a single jurisdiction application; requires such applicants to specify the mechanisms that will be used to ensure that the economic benefit is shared among the localities as specified by statute
	112-480		Adds a section related to application considerations to be consistent with statute, specifically that zone designations will be based on locality-wide need and impact; that need shall be based on (i) the average unemployment rate for the locality over the most recent three-year period, (ii) the average median adjusted gross income for the locality over the most recent three-year period, and (iii) the average percentage of public school students within the locality receiving free or reduced price lunches over the most recent three-year period; that these distress factors shall account for at least 50 percent of the consideration' for enterprise zone designation and that local governments must provide local incentives to be consistent with statute
111-330	112-490		Revises zone amendment procedures to be consistent with statute
111-335			Remove the provision that allowed for Richmond to amend its zone boundaries to create a joint zone with Henrico County to be consistent with statute
	112-500		Add section related to Procedures for annual review of zones to be consistent with statute
111-340, 350	112-510, 520		
	112-530		Adds procedures for zone renewal to be consistent with statute
111-360	112-540		<i>Corrects transposed words to read "large qualified zone residents"</i>  <i>Adds "qualified" to large zone residents and business firms for consistency and correct terminology</i>
111-370, 380			Removed to be consistent with statute
111-390	112-550		
111-400	112-560		

*Text in italics indicates those changes that were made to the "first version" of the proposed regulations forward. In other words – those italicized portions have no reference to the 2000 Regulations but are related to the language/content in the Emergency Regulations or were changed as a result of the public comment period.*

## Regulatory flexibility analysis

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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With regard to Items 1-3, local enterprise zones submit one report annually on the use of incentives and activities within the zone as the basis of the Department's annual report, which is required by statute. Item 4 does not apply to this program. The only aspect of this regulation that would affect small business would be with regard to incentive qualification which is set by statute and makes no provisions for qualification based on size.

## Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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There is an indirect positive impact on the family in that one purpose of the program is to create net new jobs in distressed areas of the Commonwealth. Businesses must pay at least at 175 percent of the federal minimum wage in order to qualify for job creation grant. This can encourage economic self-sufficiency and increase disposable family income.